

TITLE 3. FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (herein after referred to as "Department") is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **beginning September 22, 2017 and ending at 5:00 p.m. on November 6, 2017**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vest by section 407, Food and Agricultural Code and Section 11400.20, Government Code, and to implement, interpret or make specific sections 9166, 9641.5, 10341, 10342, 10610, 10721, 17042, 17043, 17045, 17061, 17062, 17068, 17092, 17096, 17121, 17122, 17551, 17552, 17553, 17951, 18982, 18983, 18991, 19001, 19002, 19302, 19305.5, 19310, 19310.5, 19310.7, 19311, 19312, 19313, 19313.1, 19313.5, 19314, 19315, 19316, 19317, and 19447, Food and Agricultural Code; Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5, Food and Agricultural Code; Chapter 1 (commencing with section 9101), Chapter 1.5 (commencing with section 9210), Chapter 2, sections 9301 through 9352, Chapter 3 (commencing with section 9641.5) of Part 1, Chapter 2 (commencing with section 9901), Chapter 3 (commencing with section 10301) of Part 2; Chapter 1, section 10701 of Part 3, and Chapter 1 (commencing with section 11201) of Part 4, Division 5, Food and Agricultural Code; Part 1 (commencing with section 16301), Division 9, Food and Agricultural Code; Division 10 (commencing with section 20151), Food and Agricultural Code; Division 11 (commencing with section 23001), Food and Agricultural Code; Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15, Food and Agricultural Code; ~~and~~ Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15, Food and Agricultural Code; Article 8 (commencing with section 33251), Article 9 (commencing with section 33291) of Chapter 4, Part 1, Division 15, Food and Agricultural Code; Chapter 10 (commencing with section 34501) of Part 1, Division 15, Food and Agricultural Code; Part 2 (commencing with section 35601) and Part 3 (commencing with section 36601) of Division 15, Food and Agricultural Code; Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, of the Government Code, the Department is proposing to amend sections 1310, 1310.1, 1310.2, and 1310.3 and to adopt section 1310.4 of Article 1, Chapter 9, Division 2, of Title 3 of the California Code of Regulations, to read as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW/BENEFITS

Existing law, section 407 of the Food and Agricultural Code, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, section 11400.20 of the Government Code, specifies that an agency may adopt permanent regulations to govern an adjudicative proceeding under the chapter [Chapter 4.5, Administrative Adjudications: General Provisions, sections 11400 – 11475.70].

Existing law, Food and Agricultural Code sections 9562 and 9570 authorize the State Veterinarian to quarantine animals and animal products if there is any serious threat to public health and safety, or to the safety of the State's food supply.

Existing regulations, sections 1301.2 and 1301.3 of Title 3 of the California Code of Regulations specify the informal hearing procedures for a person to contest a quarantine order issued by the State Veterinarian.

For violations that do not result in the immediate quarantine order, the Department would serve a notice of a citation or letter of impending action [sometimes called a notice of adverse determination] against an individual who violated specified statutes and regulations pertaining to animals and/or animal products. Regulations exist under Title 3 of the California Code of Regulations in sections 1310 – 1310.3 which allow a person to appeal such adverse actions or determinations issued by the Department through an informal hearing process.

This proposal amends the Department's existing informal hearing regulations under Title 3, sections 1310 – 1310.3, to add and reorganize the statutes that may be utilized via the informal hearing process should a person be in violation of those statutes, and any regulations implementing those statutes, after an investigation and review of the evidence presented in the matter. This proposal also amends the time frames for a person to request an informal hearing from the Department, and adds new section 1310.4 to address enforcement matters that involve animals or animal products and time constraints involving the health and safety of live animals or perishable food products. This proposal also makes technical changes for consistency and clarity purposes.

Anticipated Benefits of the Proposal: This proposal benefits both the Department and the public. The purpose is to provide the informal hearing process to persons found to be in violation of specified provisions of the Food and Agricultural Code and any regulations that implement said Code. It would pertain to offenses that do not involve an immediate threat to public or animal health and safety and would not involve an immediate threat to the State's food supply. It is a way to adjudicate less egregious offenses in a timely and cost-effective manner.

Consistency and Compatibility with Existing State Regulations: The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The Department may establish and implement, via regulation, informal hearing procedures in accordance with Chapter 4.5 (commencing with section 11400) of Part 1, Division 3, of Title 2 of the Government Code.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations: None.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 et seq. Require Reimbursement: None.

Business Impact: The Department has made an initial determination that the proposed regulatory action will not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The determination is based on the fact that the proposal only affects persons found to be in violation of specified statutes (after examination of the complaint and the evidence presented) and any regulations that implement those statutes. For example, violations for agriculture-related misdemeanors are typically small penalties of \$500 or less. If a person contests that violation, it could be handled through the Department's informal hearing process.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action. It pertains to persons or businesses who may be found to be in violation of specified statutes of the Food and Agricultural Code and any regulations implementing those statutes.

Persons/Businesses affected by this proposal:

- This proposal affects any person, whether they are required to be licensed or registered by the Department under its existing statutes or regulations or to any unlicensed or unregistered person who may be found conducting certain agriculture-related businesses in the State, or to any other person who is found, after investigation, to be in violation of the Department's statutes or regulations. Depending upon the facts presented in each case, the matter may be adjudicated using the Department's internal, informal hearing process. It is a way to adjudicate matters in a timely and cost-effective matter for all affected parties.

Anticipated compliance requirements as a result of this proposal:

- The proposal contains no specific record keeping, paperwork or reporting requirements. It provides information to persons who may be found in violation of specified statutes or regulations of the Department, and provides filing deadlines and procedures if they wish to contest an adverse action issued by the Department and request an informal hearing.

Effect on Housing Costs: None.

Effect on Small Businesses: The Department's proposal may affect small businesses if a licensee or registrant of the Department is found, after investigation and the facts presented in the case, to be in violation of specified statutes or regulations and that person may also be a small business owner as defined in Government Code section 11342.610.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

The Department has made a determination that this regulatory proposal:

- Will have not have any significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations.
- Will not affect the creation of new businesses or the elimination of existing businesses within the State of California, and does not affect the expansion of businesses currently doing business within the State of California.
- Does not impact multiple industries.
- Will impact any person who is found, after investigation, to be in violation of statutes and regulations of the Department and they request an informal hearing to contest a notice of violation. The Department's proposal may affect small businesses.
- Benefits both the Department and the public. The purpose is to provide the informal hearing process to persons found to be in violation of specified provisions of the Food and Agricultural Code and any regulations that implement said Code. It would pertain to offenses that do not involve an immediate threat to public or animal health and safety and would not involve an immediate threat to the State's food supply. It is a way to adjudicate less egregious offenses in a timely and cost-effective manner.

Benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the State's environment: The proposed regulation does not directly impact human health and welfare, worker safety, and the environment. The Department's informal hearing process is designed to handle enforcement actions that do not involve an immediate threat to public health and safety.

This regulatory proposal will provide clarity to the public as to the statutes that are included in the informal hearing process and any regulations implementing those statutes that would be reasonable to adjudicate in a timely and cost-effective manner which would benefit both the Department and the person who is contesting the adverse determination issued by the Department.

The above determinations are based on the fact this regulatory proposal is necessary to update the statute citations and the procedures for the implementation of the Department's informal hearing process in accordance with sections 407 of the Food and Agricultural Code and section 11400.20 of the Government Code.

Occupations/Businesses Impacted: The Department has made an initial determination that this regulatory proposal will impact any person who is found to be in violation of specified agriculture-

related provisions of the Food and Agricultural Code and any regulations that implemented said Code.

Business Reporting Requirement: The regulation does not require a report, which shall apply to businesses.

Comparable Federal Regulations: This proposal does not duplicate or conflict with federal regulations. Federal violations would be addressed by the federal authorities responsible for enforcement. Such enforcement could be administrative, civil, or criminal, depending upon the statutory authority of the program. Federal authorities would pursue such actions independent of the Department.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This regulatory proposal is necessary to update the statute citations and the procedures for the implementation of the Department's informal hearing process in accordance with sections 407 of the Food and Agricultural Code and section 11400.20 of the Government Code.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained by contacting the persons named below or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

Any person may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries and any written comments concerning this proposal are to be addressed to the following:

Nancy Grillo, Legislation & Regulation Coordinator
Department of Food and Agriculture
Animal Health & Food Safety Services
Division/Administration
1220 N Street, Sacramento, CA 95814
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The backup contact person is:

Thamarah Rodgers, Legislation & Regulation Coordinator
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Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>